

The Odisha Gazette

EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 2337 CUTTACK, THURSDAY, DECEMBER 5, 2024/MARGASIRA 14, 1946

LABOUR & E.S.I. DEPARTMENT

NOTIFICATION

The 26th November 2024

S.R.O. No. 641/2024—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 30th September, 2024 passed in the I.D. Case No. 02 of 2018 [under Section 2-A(2)] passed by the Presiding Officer, Labour Court, Jeypore on the industrial dispute between the Chief District Medical Officer, P.O./ Dist. Koraput (Odisha), Management No. 1, 2. the Medical Officer In-Charge of Community Health Centre, Kundra, P.O. Kundra, Dist. Koraput (Odisha) Management No. 2 and Shri Sanjib Kumar Asha, Ex- workman of CHC, Kundra, Workman/Claimant ITDI Colony, near Block Office, P.O. Kundra, Dist. Koraput (Odisha) is hereby published as in the schedule below :—

SCHEDULE

IN THE LABOUR COURT, JEYPORE, KORAPUT

INDUSTRIAL DISPUTE CASE No. 02 of 2018 [under Section 2-A(2)]

Dated the 30th September 2024

Present :

Shri Pravuram Das Adhikari, O.J.S.,
Presiding Officer,
Labour Court,
Jeypore, Koraput.

Between :

1. The Chief District Medical Officer, P.O./ Dist. Koraput (Odisha).	. . Management No. 1
2. The Medical Officer In-Charge of Community Health Centre, Kundra, P.O./Kundra, Dist. Koraput (Odisha).	. . Management No. 2

Versus.

Shri Sanjib Kumar Asha,
Ex- workman of CHC, Kundra,
ITDI Colony, near Block Office,
P.O. Kundra, Dist. Koraput (Odisha).

. . Workman/Claimant

Appearances :

Shri Bishnu Patra, Advocate	. . For the —Management
Shri B.V. Ramana, Authorised Person	. . For the —Workman himself

AWARD

This matter arises from an application made under Section 2A(2) of the Industrial Dispute Act, 1947 (for brevity hereinafter, I.D. Act) by the workman- claimant for adjudication of the industrial dispute arising out of his illegal retrenchment or otherwise termination of his service by his employers-management No.1 and 2 and for determination thereof seeking the relief of reinstatement, regularization of his service, payment of back wages and compensation.

2. The factual matrix of the case of the claimant, shorn of unnecessary details may be permitted to be reproduced in short as may be necessary on perusal of his claim statement application wherein he has stated that he was appointed on the 11th June 2008 temporarily on contractual daily wages basis against the existing sanctioned vacant post of attendant at Primary Health Centre later converted to Community Health Centre (in short hereinafter, C.H.C) by the management No. 1 (hereinafter in short, M1) vide its Office Order No 1515/2008-Estt.A, dated, the 11th June 2008 after due selection. In obedience to this order, he claims to have joined on the 15th June 2008 and worked as such there continuously without any interruption till the 15th September 2017 for about 9 years and 3 months under the management No. 2 (hereinafter in short, M2) to his satisfaction within the meaning of Section 25 B of the I.D. Act. He used to draw his pay/wages being credited to his S.B Pass Book Account his Savings Bank Pass Book Account No. 30654710526 with State Bank of India, Jeypore Branch at Jeypore (Odisha) till the month of February 2015. His duty period wages from March 2015 to September 2015 for about 7 months aggregating to Rs. 31,900 was also paid on the 11th August 2017 being deposited in his above S.B Account whereas his wages from October 2015 to August 2017 for 23 months were not paid. Therefore, on the 15th September 2017, he approached and requested M2 to take up the matter of such non-payment along with the matter of revision of his pay as per 7th Pay Commission and regularization of his service with M1. M2 is stated to have promised him to do the same with M1. But on the next day i.e. the 16th September 2017, M2 allegedly on the ill-advice of the clerk Shri Ranjit Kumar Panda verbally ordered him that his service was not required with immediate effect from that day of the 16th September 2017 and that he was not allowed to attend his duty from the 16th September 2017. Accordingly, his service is stated to have been terminated by M2 and the same was *done* without following of the provisions of the I.D. Act and violating the principle of natural justice. It is further stated that two days after such termination, the workman in person approached and apprised about such termination to M1 and requested him for giving necessary instructions to M2 to allow him to join in his post and perform his duty as usual considering his continuous service from the 15th June 2008 to the 15th September 2017 and seniority. It is alleged that though M1 assured the workman to issue necessary instructions within 2 to 3 days thereafter to M2 to allow him to work as usual till the 27th October 2017 but no such instruction was imparted to M2 and thereby M1 is alleged to have made his tacit approval to such illegal termination by M2. Therefore, the workman made complaint before the Dy. Labour Commissioner Jeypore about such illegal and void termination

of his service with copy of it to the M1. It is also alleged that despite receipt of such copy, M1 did not give any such instruction to M2. As such, termination is not tenable under law. Consequentially, it is reiterated that the workman to be treated in service for all purposes.

2.1 Besides, the workman is also found to have made some allegations vide Para. 7 at Page 5 of his claim statement stating therein that his employers-management have not followed the terms and conditions of above appointment orders without issuing fresh appointment order giving gap of one day after expiry of 44 days and some of the conditions of the said appointment order caused deprivation of his right as guaranteed by the statute such as I.D. Act and labour welfare legislations and also are also adopting unfair labour practice and violating his constitutional rights as well for which the said appointment order is also void according to law despite management have engaged the workman continuously without any interruption from the 15th June 2008 till the 15th September 2017 but illegally terminated of his service in the manner as stated above for which the workman is entitled to the reliefs as prayed for in the interest of justice and under all fairness as follows :—

- (i) to pass an order setting aside the terminating of his service with effect from the 16th September 2017 and to reinstate him in service with continuity of service and all service benefits carry with it including the payment of the back wages with effect from the 16th September 2017 to till the date of his reinstatement in service by M1.
- (ii) to pass an order directing M1 for payment of his duty period wages of 23 months i.e. from October 2015 to August 2017.
- (iii) to pass an order directing M1 to revise his wages with effect from the 1st January the differential amount arrived by revising.
- (iv) to pass an order directing M1 to regularize his service with effect from 15th the August 2008.

3. Upon notice the M1 and M2 entered their appearance through legal representative, claiming to be Government Advocate, and filed their respective written statement on the 20th February 2019 and the 6th November 2019 respectively. Though they have filed separate written statements but their contentions are substantially same in reply to the allegations made by the workman in his claim statement for which the same may be permitted to be reproduced once to avoid repetition. There is no dispute as to appointment of the workman as such but for short term of 44 days subject to condition that there must be a gap of at least one day between every two spell of such engagement at the above C.H.C vide the above order of M1 and his joining there at on the 15th June 2008 and his continuous work there at since then till the 28th February 2015 on receipt of his due remuneration from M2. It is also stated that M2 also paid his wages from the 1st March 2015 till the 15th September 2015 for his performance of his duty as such. It is counter alleged that the workman has not performed his duty performed any duty with effect from the 16th September 2015 for having remained unauthorized absent at his sweet will without any intimation to M2. As such his wages have been stopped since then as per Letter No.1216, dated the 16th November 2017 of M2 to M1. It is also averred that there is no specific indication about his retrenchment therein. It is also stated that the workman knowing the practice of “ No Work and No Pay” and his fault of such unauthorised absence and that he has been paid till the 15th September 2015 as per his attendance to the duty, he has remained silent from the 16th September 2015 till the 26th October 2017 after which he made representation to Deputy Labour Commissioner on the 27th

October 2017 claiming therein for payment of salary as regular Class-IV staff without performing any work since the 15th September 2015 which is not permissible in law and the same is not at all maintainable. It is also stated that as no specific orders as to termination of services of the workman from the 16th September 2017 has been passed by M1 or M2 and he has remained absent from the 16th September 2015 till date at his own will for pretty long period, his prayer for allowing him to join in his engagement is not permissible as his previous engagement was purely temporary on daily wages basis since there is specific guidelines Government in Finance Department Office Mernorandum No. 236, dated the 23rd June 2012 to the effect that un-authorised absence for a continuous period of 15 days or more of such employees will automatically terminate his/her engagement. It is additionally stated in the written statement of M2 that the I.D. Act is not applicable to the workman and the case is otherwise not maintainable. Accordingly, it is prayed that the claim statement of the workman may be dismissed with cost having no merits.

4. Upon the above written statements by M1 and M2, the workman has also filed the rejoinder on the 17th August 2022 substantially reiterating the averments as stated in his claim statements and additionally denying as to issuance of fresh appointment order after expiry of each of the spells of 44 days and the workman has worked continuously without interruption from the 15th June 2008 till his alleged termination on the 16th September 2017 by M2 and M1 abusing their position and power and adopting the unfair labour practice and violating the provisions under Section 25 B, 25 N and 25 T. It is further stated that the workman was not paid every month or say the next/the following month but as and when the financial sanction is/was obtained from the competent authority then the due wages or say arrear wages were used to be paid by crediting to his Bank Account. It is categorically stated in his rejoinder that the pleadings in the W.S of M1 and M2 as to unauthorised absence of the workman with effect from the 16th September 2015 can not be said true in view of the entries in the attendance register maintained in the office of M2 and it is categorically reiterated that in fact and indeed he worked continuously from the date of joining to the date of unlawful termination of his service (i.e. from the 15th June 2008 to the 15th September 2017 = 9 years 3 months) and the same can be inferred from the Letter No. 9616/2017-Estt. Class-IVD Koraput, dated the 6th July 2017 of M1 addressed to the Director of Health Services, Odisha, Bhubaneswar wherein it is established that the workman was continuing his service till then which may be the date of issuance of that letter on 6th July 2017 and that the reply of M2 to Divisional Labour Office vide his Letter No. 1216, dated the 16th November 2017 is not true. It is alleged that the workman was not allowed to attend his duties with effect from 16th September 2017 though he is senior to 21 other Employees who are allowed to continue in service as his name is at Sl. No. 3 of the list of candidates who are continuing as short term 44 days daily wages basis since 2008 and who have completed 6 years of continuous service. It is submitted that after filing of this case eighteen of his juniors, namely Shri Kali Prasad Khemundu and 17 others filed the O.A. No. 1386 (C) /2019 before the Hon'ble Odisha Administrative Tribunal, Cuttack Bench at Cuttack for regularisation of their services as they completed more than 6 years of continuous contractual service. Though the workman has completed for more than 9 years of continuous service, he could not be included as one of the applicant in the said O.A. No.1386 (C) / 2019, as this case has been pending here in this court since then. The services of the said juniors have been regularised so the service of the workman is to be regularised according to his right as guaranteed by Article 14 and 16 of the constitution and settled law.

5. On these rival pleadings of the both side statements, the following issues are framed for adjudication :—

ISSUES

- (i) Whether this proceeding is maintainable ?
- (ii) Whether the workman has been terminated illegally on the 16th September 2017 by the management under Section 2A the I.D. Act ?
- (iii) Whether the workman is entitled to relief of reinstatement and back wages as claimed by him under I.D. Act ?
- (iv) Whether the workman is entitled to regularisation of his service as claimed by him under I.D. Act, 1947 ?

6. In order to substantiate his stand the claimant has examined himself as WW 1 and has proved series of documents vide exhibit Ext. 1 to Ext. 10 whereas four witnesses have been examined on behalf of the management. Besides a series of documents vide Ext. A to L have been marked on behalf of it.

FINDINGS

7. *Issue No. (i) and (ii)*—These issues are taken up together first to avoid repetition and being vital ones. There is no dispute that the claimant having been appointed temporarily as an attendant at PHC/C.H.C., Kundra by M1 on the 11th June 2008 vide Ext.5 /Ext.A joined on the 15th June 2008 as such vide Ext. B and that since then he has worked there till the 28th February 2015 under M2 on 'phasewise extension of his service vide Ext. C, D & E of the office of M1. Ext. C, D & E, on perusal, would show one year term of such extension with gap of one day instead of initial spell of 44 days with one day gap. No extension order admittedly has been issued by M1 in favour of the claimant after expiry on the 28th February 2015 as per Ext. 3. There is no dispute as to payment to the claimant till then. Admittedly, Ext. 5/Ext. A goes to show that the engagement, though is terminable at any time, is allowed till the 'post is filled up through' usual recruitment process or until further (may be missing, order) whichever is earlier. Admittedly, no such recruitment process nor any order as per Ext. 5/ Ext. A is found to be made not being proved by the management. Thus, it can be said safely that such right of the claimant to work in the said post under M1 and M2 will continue till the post is being filled up by the above process of recruitment or by passing of order of termination event before such recruitment.

7.1 There is no dispute as to existence of such right of the claimant by the 15th September 2015 since no such order of termination or recruitment was made by then. Now it is to be seen if such right continues even thereafter and if the claimant is entitled to get the reliefs as sought for by him. There is no material being produced by the management showing any such recruitment or termination order has been passed till date. Moreover it is stated in WS that no specific order of termination has been made till yet. Thus, such right of the claimant can be said to continue till now if such right has not been otherwise extinguished in the meantime. According to the claimant, despite continuous of his such right to work for having put up his service as such continuously for about more than 9 years and 3 months as per Section 25-B of the I.D. Act, he has been illegally

terminated on the 16th September 2017 by the verbal order of M2 who ordered him not to work since then and that his service was no more required since then, when he made request to him for taking steps to pay his arrear pay for his work from October 2015 till August 2017 and other matters with M1. On the other hand, according to M1 and M2, his such right has been extinguished after the 15th September 2015 for his unauthorised continuous absence from duty since the 16th September 2015 till date for being more than 15 days as per the Finance Department Memorandum No. 23689, dated the 23rd June 2012. Thus, the real dispute of the claimant can be dated back to the 16th September 2015 since when there is claim of non-payment of his work since his such work from the 16th September 2015 is denied and disputed by M1 and M2. According to M1 and M2, the claimant has already been terminated automatically on expiry of his 15 days period of his continuous unauthorised absent from the 16th September 2015, in view of the above said Office Memorandum, as such there is no question of his alleged termination on the 16th September 2017 by M2 for which he can not be treated to be in service for all purposes as claimed by him and thereby he is not entitled to any relief as sought for by him. Such contention as well as the alleged absence is denied and disputed by the claimant. He claims to have worked continuously since the 15th June 2008 till the 15th September 2017 without any interruption and proved the same by his affidavit evidence.

7.2 Admittedly, it appears from the written statement that the claimant was used to be paid according to his attendance registers being maintained in the office of M2 to record his daily attendance along with others. Thus, there remains no doubt the management M1 & M2, alleging and asserting such absence of the claimant, have to prove the same, since there is no dispute as to the work done by the claimant and payment to him in lieu of his such work till the 15th September 2015 by the management. Since, the claimant be presumed to be so working until and unless his such alleged absence is proved by M1 & M2, particularly when WW1/PW1 has already stated in his affidavit evidence as well as his claim statement that he worked as such continuously without any interruption of his service since the 15th June 2008 till the 15th September 2017 and has produced the photo copy of the attendance register for the year vide Ext. 8 attendance register for the 2016 which thereby creates doubt upon the plea of the M1 and M2 that the claimant has remained absent since the 16th September 2015 and thereby the claimant shifts onus to M1 and M2 to prove his alleged absence and disprove such claim of the workman. This view can also be fortified by the Judgment of our own Hon'ble High Court as held in the case of Chief Executive Officer-*cum*-Commissioner, Cuttack Municipal Corporation Vs Atul Kumar Barik reported in 2013 (1) ILR - Cut.31.

7.3 To prove the same, the M2-MW4 has produced the original attendance registers for the year 2015, 2016 and 2017. These have been proved on the 19th January 2024 vide Ext. J, K & L without any objection on behalf the claimant-workman. The perusal of Ext. J, K and L would *prima facie* reveal the factual positions of the presence or absence of the claimant during the period the 1st January 2015 till date by taking into account the facts that he has signed, not signed, no entry of his name and remarks or/and endorsement of the concerned M2. These may be permitted to be reflected in consolidated form in the following tabular form for easy and better understanding of the factual position:—

TABULAR FORM OF ATTENDANCE OF THE CLAIMANT AND RECOGNITION
THEREOF BY M2

Month/Year	Claimant's signature		Management		
	2	3	4	5	6
	Yes	No	Striking off Signature/Name (Yes/No)	Name entry	Sig. /seal of M2 with date and endorsement with reasons.(Yes/No)
Jan. 15 to Feb. 15	-	-	-	No Entry	Yes, without date
Mar. 15 to Aug. 15	1-03-15 to 31-08-15	-	No	Yes	Yes, with endorsement no renewal from 01-03-15
Sept./2015	01-09-15 to 15-09-15	16-09-15 to 30-09-15	No	Yes	Yes/30-09-2015
Oct. 15 to Dec. 15	-	-	-	No Entry	Yes/30/31-10-2015
Jan./16	Full	Nil	Yes (red ink)	-	Yes/- (blue ink)
Feb./16	Full	Nil	Yes (red ink)	-	Yes/- (blue ink)
Mar./16	Full	Nil	Yes (red ink)	-	Yes/- (blue ink)
April/16	Full	Nil	Yes (red ink)	-	Yes/- (blue ink)
May/16	Full	Nil	Yes (blue ink)	-	Yes/- (blue ink)
June/16	01-06-16 to 29-06-16	30-06-16	with sig. of M2/ 31-10-16 do	-	31-05-16 Yes/- (blue ink)
July/16	Full	Nil	do	-	Yes- (blue ink) 27-07-16
Aug./16	Full	Nil	Yes (blue ink)	-	Yes-(blue ink) 26-08-16
Sept./16	Full	Nil	Yes (Blue ink)	-	Yes (blue ink)
Oct./16	1-10-16 to 25-10-16	26-10-16 to 31-10-16	Yes (red ink) with blue sig. nothing unauthorised signed without his knowledge	-	Yes (blue ink)
Nov. 16 to Oct.17	-	-	-	No Entry	Yes

7.4 From the above factual position, it is apparently clear that the claimant has not signed against his name being found in the attendance register, on the 16th September 2015 to the 30th September 2015, 30th June 2016 and 26th October 2016 to the 31st October 2016. Admittedly there is no explanation from the side of the claimant as to his such non-signature either in his pleading or in his evidence. No other material being produced to show that he was present and worked on these days despite such his non-signature save and except his ocular testimony. Thus, it can not be safely said factually that he worked since his joining date till the alleged date i.e 16th September 2017 without any interruption as contended by the workman. Equally, it can not be safely said that the workman has remained absent since the 15th September 2015 till the 26th October 2017 and even thereafter as contended by M1 & M2 save and except the above absence of which the claimant has not offered any reason, since it appears from the above table that the name of the claimant has not been entered in the attendance registers by M2 from the month of October 2015 to December 2015 and from the month of November 2016 till September 2017 (by the alleged date) and even thereafter. Thus, it can not be said safely without any doubt that the claimant has remained absent for those days/months or in fact has worked for those period amid admitted fact of his work alike in the similar situation in the month of January and February 2015 where his work was not disputed by M2 despite non-entry of his name in the same attendance register-Ext. J and the payment has been made for that period also. Now it is to be seen whether on the days on which his signatures have been struck off; or as may be understood by M2-MW4 as rounded off, since 1st January 2016 till the 25th October 2016, the claimant in fact worked as contended by the claimant or remained absent as contended by the management. In fact the signatures have not been rounded off. Moreover, though M2- MW4 in his affidavit has stated at Para.8 that the claimant has manipulated and entered his name in the attendance register and signed therein illegally from the 1st January 2016 to the 25th October 2016 and from the 1st November 2017 to the 13th November 2017 without the knowledge of the Pharmacist and the then MO-M2 for which the same have been rounded off as per the endorsement on the relevant attendance registers but the said endorsement has not been proved by the concerned MO-M2- the author of the same so as to prove the same nor by MW4 himself as desired by law. Most importantly, the material facts as to his such illegality and manipulation have not been pleaded by M1 and M2 in their WS nor the same have been confronted to the claimant-WW1-PW1 during his cross-examination so as to prove the same. Thus, there remains no doubt such ocular testimony of the MW4 as to such manipulation or illegality is beyond pleading. As such the same can not be accepted unless otherwise the same are proved as per law through evidence or otherwise and if the claimant is not prejudiced. Admittedly, on close scrutiny, Ext. K and L would show that there is no endorsement as to his unauthorised signature prior to the 31st October 2016 on which date such endorsement appears to have been given on back pages-months with the dated 31st October 2016 but the same has not been proved by the author of it or by MW4 by himself not being marked exhibited. Moreover such endorsement' can be inferred to have been given not prior to verification date of the then M2 with his seal and signatures as indicated in the table. Can it be said that till that day he was marked absent and thereafter he has unauthorised signed on it and if so why. This can not be safely said so in view of prior verification of M2 not marking him absent unlike other staff whose names are also found therein to be so marked absent nor being shown as overwritten/ erased amid absence of any such pleading to that effect and amid non-proof of manipulation or illegality in absence of non-examination of said pharmacist or the maker of the endorsement on behalf of the management.

7.5 Moreover, the letter by M2 to M1 vide Ext.G showing his absence till the 18th August 2017, which is much later to the endorsement of M2 on the 31st October 2016, does not show about any illegality or manipulation done by the claimant. Thus, it is hard to believe that such manipulation was made prior to the 18th August 2017 and that the same was verified on the 31st October 2016. If the claimant remained absent since the 15th September 2015 till the 26th October 2017 as per the WS, then there may not be a chance on his part to sign on the registers far less in the above manner not being proved amid the above facts and the circumstances of different dates as found from the attendance registers Ext. K and L, particularly in absence of any evidence to have seen the claimant has so manipulated in absence of any pleading in the W.S. As such, the management can not be said to have proved the same according to law since the said signatures have not been confronted to the claimant, if the same were put by him even after filing of the complaint before the Deputy Labour Commission on the 27th October 2017 as per Ext. 1. If at all, any such manipulation or illegality was committed by the claimant, then the M2 would have also reflected the same in his reply Letter No. 1216 dated the 16th November 2017, which has been marked Ext. 3 by the claimant without objection but not. Thus, it may so happen after his signatures some body has so struck off. Besides, the claimant has also proved his signatures during the year 2016 vide Ext. 8 which has been admitted into evidence without any objection from the side of M1 or M2. On bare perusal of Ext. 8 the photo-copies of the attendance sheets from the January 2016 to September 2016 would not show such striking off of his signatures. Thus, it can be said that his signatures for such period have been so struck off on the 31st October 2016 as found above. Accordingly, it can not be concluded that the claimant has manipulated such signatures including the ones which are alleged to have been made in the month of November 2017 since the same is not expected from the claimant in the circumstances after filing of such complaint taking the plea to have been terminated by M2 nor it is expected from M2 being the medical officer and immediate authority of the claimant for remaining silent without calling for any explanation or intimating about such manipulation or any illegality to his higher authority M1, who is the appointing authority of the claimant, particularly while intimating that the claimant remained absent from the 16th September 2015 till the 18th August 2017, which could not be proved by the management as found above, save and except as given in the above table. Had there been any such manipulation or any illegality before the date of such issuance of Ext, G by M2 to M1 or sending the reply vide Ext. 3 to D.L.O, which is also silent as to the end date of the work of the workman where it is mentioned that the claimant was allowed to work for some time in anticipation of his extension, he must have mentioned the same therein with definite dates, though the date of such allegation by the 13th November 2017, can be said fresh near the date of issuance of Ext. 3 or at least the circumstances of non-mentioning of the same would have been proved in this case with pleadings there to by M2-MW4.

7.6 Moreover, though MW4 in his cross-examination stated to have reported about such matter to M1 but no paper has been produced to prove the same nor the same is found from the evidence of MW3-M1 who is found to have stated in his cross-examination not to have any knowledge about the communication made by M2 to his office about the alleged absence of the claimant. MW3 even admitted at Para.17 in his cross-examination, not to have called for any explanation from the workman about his absence. He self clarified that there was no need of calling for explanation since he was a daily wager. He also negated the requirement of one month notice to him for the same reason. Such negation is to be seen in accordance with the law. He admitted regarding the issuance of Ext. 9 which shows continuous service of the claimant till the 6th July 2017. Obviously, it creates doubt over the conduct of M2 as to his silence without informing M1 till

the 18th August 2017, for about two years until letter from labour office, about his unauthorised absence or as to any such manipulation or illegality done by the claimant thereafter and the conduct of M1 to report to higher authority without knowing about such absence or manipulation if being reported to him, there were manipulation of name by the workman. Accordingly, the mere such ocular testimony of the MW4 as to manipulation or illegality of the workman not being supported by any other legal evidence not being found from the affidavit evidence of MW1, 2 and 3, who have not whispered a single word as to such illegality or manipulation, would not be sufficient for holding such manipulation or illegality done by the workman when had right to work and sign until recruitment or termination order made by the management. Consequentially, it can not be concluded that the claimant remained absent far less of unauthorizedly at his sweet will since the 15th September 2015 till date of allegation though it can not be denied that claimant has remained absent from his duty factually from the 16th September 2015 to the 30th September 2015 and 30th June 2016 and 26th October 2016 to the 31st October 2016 for not having his signatures against his name as per Ext. J. K. L as shown in Column No. 3, since the same are not otherwise proved by the claimant to rebut such *prima facie* evidence.

7.7 Now it is to be seen whether such factual absence of the claimant would amount to his automatic termination as contended by the management. Such contention of the management is negated by the Learned Authorised person for claimant. He submitted during argument that the M1 and M2 can not take the benefit of the said memorandum of the Finance Department treating the unauthorised absence amounting to “automatic termination” since the same has been declared ultra vires vide in the Judgment of our own Hon’ble High Court in the case in case of Ramesh Sahoo Vrs. State of Odisha and Others, 2023 (1) OLR-263 as relied upon by the claimant. No contrary authority has been produced nor even the said memorandum has been proved on behalf of the Management but Learned Advocate management submitted supporting the same at Para.- 8 of his written argument that there is no need of issuance of termination letter to the workman since he was engaged as workman under daily wages basis. On perusal of this judgement, there remains no doubt at its Para.15, the Clause (ii) of the above Office Memorandum 23689 dated the 23rd June 2012 has been held Ultra Vires by their Lordships HONOURABLE DR. JUSTICE B. R. SARANGI AND HONOURABLE JUSTICE G. SATAPATHY observing and holding at Para.9, 10. The same may be permitted as follows that :—

“9. The phraseology used in the office memorandum with regard to “automatic termination” due to unauthorised absence for continuous period of 15 days itself is an unknown concept to the service jurisprudence. More so, in case of contractual employment also automatic termination can not be sustained in the eye of law.

10. In Krushakanta B Parmar (*Supra*) the Apex Court held that in a departmental proceeding, if the allegation of unauthorised absence from duty is made.. the disciplinary authority is required to prove that the absence is wilful, in absence of such finding, the absence will not amount to misconduct.

11. In Laxman Dundappa Dhamanker (*Supra*), while considering whether the appellant having been appointed on probation they would be deemed to have become regular teachers on expiry of probationary period, the Apex Court did not feel inclined to go into that question in view of the fact that even though the appellant were probationers, their services could not be ceased to have effect either by non-approval by the Head of the Department or by their remaining absent from their respective duties and there is no

provisions either in the Act or the Rules providing for automatic termination of services of a teacher on account of being absent without leave, it is open to the management to terminate the services of such teacher only after complying with the provisions of the Act and the Rules or principles of natural Justice.”

7.8 Admittedly, no departmental proceeding has been initiated by the management in this case nor any explanation or notice has been served upon the claimant as to his unauthorised absence as seen above nor any Act or Rules being shown for treating his such unauthorised absence for 15 days or more amounting to automatic termination as contended by the management save and except the above Memorandum which has been declared ultra vires as aforesaid. It may be additional plea that said memorandum was not so declared as ultra vires by that time. Such has not been pleaded by the management. Besides the said memorandum effect can not be said to have overriding effect upon the statutory Rules and the Act, like in this case the I.D. Act vide Section 25 F which prescribes mandatory notice and for natural justice in view of the aforesaid Judgement of Laxman (*Supra*). This same is fortified by the Judgement of the Constitution Bench of Hon'ble Apex Court in the case of State of Karnataka and Vrs. Umadevi And others decided on the 10th April 2006, wherein it has been observed at Para. 5 that Normally, statutory rules are framed under the authority of law governing employment. It is recognized that no Government Order, Notification or Circular can be substituted for the statutory rules framed under the authority of law.

Admittedly, the workman factually has remained absent as seen above and thereby he can not be said to have remained absent without interruption. It is not to be forgotten that the claimant has claimed to be continuous service within the meaning of the Section 25-B, I.D. Act and thereby the notice under Section 25 F or 25N, as the case may be, is required before the alleged acts of termination by the management- M2.

7.9 Admittedly, the applicability of the Act and maintainability of this case has been made negative in WS. Hence in my humble opinion it is apposite to reproduce relevant provisions of the Act herein as follows:—

Section 2 -Definition- In this Act , unless there is anything repugnant in the subject or context -

...XX...

2(aaa)“average pay” means the average of the wages payable to a workman-

(i) in the case of monthly paid workman, in the three complete calendar months,

(ii)..xx..

(iii) in the case of daily paid workman, in the twelve full working days, preceding the date on which the average pay becomes payable if the workman had worked for three complete calendar months,

or ..xx..

2(g)“employer” means-

(i) in relation to an industry carried on by or under the authority of any department of ..xx.. a State Government the authority prescribed in this behalf, or where no authority is prescribed, the head of the Department;

(ii) ...xx..

2(j) “industry” means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment,

handicraft, or industrial occupation or avocation of workmen;

2(k) "industrial dispute" means any dispute or difference between .. xx .., or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

2(kkb) "Labour Court" means a Labour Court constituted under Section 7
2(s) "workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal discharge or retrenchment has led to that dispute, but does not include any such person-

- (i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or
- (ii) who is employed in the police service or as an officer or other employee of a prison; or
- (iii) who is employed mainly in a managerial or administrative capacity; or
- (iv) who, being employed in a supervisory capacity, draws wages exceeding 2[one thousand rupees] per menses or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

2A. dismissal, etc., of an individual workman to be deemed to be an industrial dispute -

Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or different between that workman, and his employer connected with, or arising out of, such discharge, dismissal, retrenchment to termination shall be deemed to be an industrial dispute not with standing that no other workman nor any union of workmen is a party of the dispute.

7.10 On perusal of the above statutory provisions it does not come to my mind that the claimant and M1 and M2 and the Kunda C.H.C. are not workman, employers and industry respectively within the meaning of the I.D. Act, particularly in absence of any specific dispute to that effect by the management-M1 and M2 and admitting the claimant to have worked under them vide the appointment order of M1 and considering the nature of work done by the claimant and his nature of posting and having passed the triple tests; such systematic activity; the activity must be systematic, employer-employee co-operation and production of goods or services in view of the seven Judges Bench of Judgement of the Hon'ble Apex Court in the case of Bangalore Water Supply & Sewrage Board etc. Vrs. R Rajappa & Others AIR 1978 SC 548, it can not be held that the I.D. Act shall not apply to the present case. There is no specific ground being shown by the

management denying its maintainability nor the Jurisdiction of this Court. As it has been already held that the provisions of the I.D. Act can apply to this case for the reasons as aforesaid, it can be safely said that this proceeding under Section 2A is maintainable upon the allegation of termination within the meaning Section 2 (oo) of the Act read with 2A and 25F of the Act, though not proved under Section 25-N of the Act, particularly, when the contention of the management as to automatic termination of the claimant can not be accepted since the said Memorandum has no room now.

7.11 Section 2 (oo) "retrenchment":

"It means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include-

(a) Voluntary retirement ... xx .. ; or

(b) retirement ..xx.. the employer and the workman ..xx..; or

[(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein;

In this case there remains no doubt after absence of the claimant from 16th September 2015 till 30th September 2015, the name of the workman has been deleted from the attendance register without any notice to him though his right to work at the said hospital as attendant continued by then until regular or usual appointment was done nor any order terminating him was passed. However, the reason is not known again since 1st January 2016 his name has been entered. Then his such signatures are alleged to have been manipulated and illegal ones. No doubt, the allegation of manipulation can not be said to have been proved by the management for the reasons cited above. Similarly, the allegation of illegality may be based upon automatic termination can not be accepted since said memorandum has been declared ultra vires as seen above. Of course, the management could have taken disciplinary action for such unauthorised absence of the claimant after giving opportunity to the claimant of being heard by issuing notice to him or/and calling for explanation from him under the principle of natural Justice i.e Audi Alterem Partem or might have terminated by order as per his appointment order Ext. 5/Ext. A as punishment for his such absence so as to cease his right to work there which still exist until regular recruitment or any termination order prior to that but no such procedures have not been maintained by the management. Of course, the management has taken another plea that no specific indication of termination has been made by M2. Does it mean that the management want to, say that it has not severed the employer-workman relationship with the claimant. If it is so, there remains no doubt such right of the workman continues. Admittedly, the claimant was not used to be paid daily to show that his right to work existed till the end of the day after his work for the day nor the same can be imported from the facts and circumstances relying upon the office memorandum creating provisions of casual leave and other reasons. Had there been that the claimant would have known that his such right existed till his payment. On the other hand, in this case the claimant was paid on arrear basis through bill as would be seen from Ext.G. This also shows that his arrear pay/wages was paid after 28th July 2017. Thus, it could be said that prior to that day it can not be said that there was no such relationship with the employer nor that the right to work of the claimant was ceased by then. If the management wanted to cease such right of work for his such unauthorised absence, the management ought to have given notice to him or called for show cause for the same. In absence of the same, the claimant signed on the registers as such thereafter within the knowledge of M2 till

the alleged date, when the manipulation of name and entries there against is not proved. As such the contention of the M1 or M2, there was no need of notice, can not be accepted for keeping him out of enjoying his right to work or his willingness to work when the claimant has admittedly served since 15th June 2008 till the date of dispute. The dispute arose when the claimant has been disallowed to work as such since 16th September 2017 when he made request for payment of his earlier arrears by verbal order of M2. Thus, he made allegation deeming to have been terminated from his service when the same has been tacitly approved by M1 as per Para. 9 of the claim statement of the claimant. The same has been stated at Para. 3 of his affidavit evidence on being examined as W.W. 1.

7.12 Nothing has been suggested to him in categorical terms during his cross-examination denying such facts that led to his termination on 16th September 2017. For better understanding, let that Para. 3 of the affidavit evidence be reproduced below:

“That it is stated that my duty period wages for the period from October 2015 to August 2017= 23 months was not paid so on 15th September 2017, the then Medical Officer in charge of C.H.C., Kundra (named Mrutyunjay Syamal) was requested for payment of the accrued amount of arrears wages. The next day (i.e 16th September 2017) when he went to attend my duties as usual then the M.O I/c, Kundra verbally ordered stating that your services are not required with immediate effect (i.e 16th September 2017) and you are not allowed to attend the duties from today (i.e 16th September 2017). After 2 days from 16th September 2017 I brought this matter to the notice of the C.D.M.O., Koraput and Appointing Authority and requested him to issue necessary instructions to the M.O I/c, Kundra for allowing me to attend my duties as usual but he did not issue any instructions to the M.O I/c, Kundra. Thereby my service were treated to be terminated or say terminated unlawfully abusing the position and powers. Hence, I am being deprived of my livelihood through it is guaranteed by Article 21 of our Constitution”.

The above have not been rebutted. Moreover in his cross-examination, W.W. 1 has not been suggested denying his such request made to the then M2 regarding payment of his arrear pay for his duty period from October 2015 to August 2017 nor as to verbal order of the said M2 on 16th September 2017 disallowing him to work nor as to his such request to M1 after two days thereafter. The same have not been categorically denied in WS at its Page 4 in replying to Para. 9 to 11 of the claim statement of W.W. 1. It is also stated that the workman remained absent from his duties from 16th September 2015 till date at his own will. Accordingly, in cross-examination, he has been suggested at Para. 25 that he had remained absent without intimating M2 since 16th September 2015 till 26th October 2017 to which W.W. 1 denied. No suggestion that he had manipulated in entry of his name and his signatures. No doubt the witness is presumed to be telling the truth until and unless he be discredited in his cross-examination which has not been done in this case. On the other hand, the W.W. 1 workman has not disclosed the reason for his absence from 15th September 2015 to 30th September 2015 and 26th October 2016 to 31st October 2016 and 30th June 2016. As such the same can be taken against him as unauthorised ones as alleged by the management but may not be wilful which could not be proved by the management in this case, through same can be proved through departmental proceeding which is open to be done after following rules and natural justice in view of the Hon'ble Apex Court as held in the Case of Laxman (*Supra*). Of course to prove the same in this case, the claimant should have been confronted by the management as to show his such absence and thereby to extract the

truth from his mouth which is the purpose of cross-examination. Admittedly the management has not pleaded specifically that for certain period he was so absent and remaining period after 15th September 2015 his name had been deleted and that the same has been manipulated by him and that he signed unauthorisedly thereafter as seen above so as to enable the workman, who is a daily labourer nor he has been given suggestion regarding the above his absence to root out the prejudice to him. It is also true that such absence *suo motu* can not amount to termination until and unless he be given notice and inviting show cause and consideration thereof and taking action there upon by the authority depending upon his satisfaction being based upon the materials available before him, particularly when the claimant has categorically averred to have worked continuously as per Section 25 B of the I.D. Act.

7.13 Now it is to be seen if he has so worked till 15th September 2017 continuously without any interruption till 15th September 2017 as per Section 25 B of the I.D. Act as pleaded in the claim statement at Para. 6. The same has been denied though not specifically. Section 25-B definition of continuous service - For the purposes of this Chapter (Chapter V-A -LAY OFF AND RETRENCHMENT):

(1) a workmen shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) Where a workman is not in continuous service within the meaning of Clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

- (i) one hundred and ninety days ..xx.. in a mine; and
- (ii) two hundred and forty days, in any other case;

(b) for a period of six months, ..xx.. actually worked under the employer for not less than-

- (i) ninety-five days, ..xx.. in a mine; and
- (ii) one hundred and twenty days, in any other case.

Explanation —For the purpose of Clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which-

- (i) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under this Act or under any other law applicable to the industrial establishment;
- (ii) he has been on leave with full wages, earned in the previous years;
- (iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and (iv) in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks.

25-F. Conditions precedent to retrenchment of workmen- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) The workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice.
- (b) The workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay or every completed year of continuous service or any part thereof in excess of six months; and
- (c) Notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.

There remains no dispute the workman though has not worked continuously without interruption since 15th June 2008 till 16th September 2017 for his proved absence as shown in the above table factually but has worked so within the meaning of Section 25-B of the Act particularly till 15th September 2015 undisputedly. Moreover, if on 1st October 2015 he be deemed to have been terminated since his name from the attendance registers have been removed and thereby it can be said that he may be called to have been terminated otherwise particularly as it is alleged that he signed illegally, when his automatic termination office memorandum has been declared ultra vires. Besides, there remains no doubt that the workman has actually done his work undisputedly since his joining till 15th September 2015 and 240 days in the year 2016 since his name was deleted which can not be said safely for his fault and similarly in the year 2017. Had his signatures were in the register and he was found absent alike the proved one, then the situation would have been difficult to be determined but not. Moreover since the workman has admittedly done his work since long as stated above which definitely more than one year in continuous service, he be presumed to be continuing the same and thereby he is entitled to given notice under Section 25-F. This view can be fortified by the judgment of our Hon'ble High Court in the case of Gopinath Panda vrs Management of M/s Minerals & Metals Trading Corporation India Ltd., BBSR reported in 2012 (i) ILR Cut 162. Accordingly, it can be held that amid existence of his right to work as an attendant at C.H.C., Kundra until regular recruitment being done or he is terminated by order as per his appointment order/letter, he or he is terminated by order as per his appointment order/letter, he has been otherwise terminated than the specific order of dismissal or retrenchment as per the plea by the management, for above reasons taken together as a cumulative effect for which he has right to file this proceeding with a prayer to give direction to the management to allow him to work and thereby reinstate him in his service since such termination can be held illegal without prior notice to him amid the above discussed facts and circumstances mainly due to violation of natural justice. The relied upon Judgement of Bhubaneswar municipal corporation Vrs. Bharat Ch. Sahoo and another disputes Act, 1947 can be accepted to this extent since no contrary authority has been produced by the management under Section 25-F condition that before terminating the services of a workman notice of one month in writing indicating the reason for retrenchment of the workman has been paid in lieu of such notice, wages for the period of the notice - If the workmen are being retrenched without following the provision as contained in the section, it will be illegal as the provision is mandatory. Consequentially, the proceeding under Section 2A can be said maintainable since has been terminated otherwise than specific order. Accordingly, these issues are answered in affirmative.

8. *Issue No. (iii)*— As it has already been held that the workman has right to work in his appointed post till the said post is filled up by regular recruitment process and he has been so

terminated otherwise than it ought be, he can be ordered to be reinstated provided the post has not been filled up yet by regular/usual recruitment process or otherwise he is not disqualified to be so reinstated. Admittedly there is no pleading as to appointment by regular recruitment process nor any other appointment alike the claimant. Moreover, no other person than the claimant is seen to have signed the attendance register against the said post even after filing of this case since it is alleged that the claimant has signed the register even after filing of the case. Admittedly the claimant was appointed in the sanctioned post lying vacant. Even if any such appointment of casual nature or *ad hoc* basis in place of the claimant might have been made as smelting from the ocular evidence of MWS but the same can not be said to be accepted in law, particularly without pleading and in absence of any further evidence of his name and date of appointment, since right of the claimant to work in that post can not be said to have been ceased. As such can be ordered to be reinstated since the post can only be filled up only by regular appointment unlike *adhoc* appointment and before lawful termination of the claimant, since the automatic termination as per the aforesaid memorandum is non-est and there is no room for automatic termination and the same is overridden by the statutory law. Accordingly, the management can be directed to reinstate by way of allowing him to work since there is no material being produced by it showing usual/regular recruitment process to fill up the post afresh nor lawful order of termination nor showing the appointment of the claimant in any other places. So far as the claim of back wages are concerned, admittedly the claimant was used to be paid on daily wages basis as per the attendance register for his work and upon the concept of no work and no pay. There is no dispute the payment has been made up to 15th September 2015. There is no doubt the workman has remained absent and has not disclosed any reason for the same nor has produced any material to show the same was authorised ones. The attendance registers goes to show that both the management and workman are equally responsible for the alleged dispute and have not come for the settlement.

8.1 In view of the above discussed facts and evidence both ocular and documentary amid other materials available on record and principles of law, it is just and proper to hold that; the claimant is entitled to full wages for his proved presence, if not yet paid, but is not entitled to get any wages for the period of his proved absence until the such absence being converted to sanctioned leave by his appropriate authority as per Rules, if permissible and admissible, and that; the claimant is entitled to get 50% wages for the remaining period as shown in the above table during the disputed period from 16th September 2015 till 17th September 2017 and for the period thereafter till his reinstatement of allowing him to work as usual before dispute. Further it is made clear that at the same time the management is at liberty to initiate departmental proceedings for such unauthorised absence of the claimant or/and for other misconducts, if any, as per Rules and after giving him notice to hold the natural justice good which can be ordered since law is well settled that applicability of Section 2-A is not limited only to removal from service. Any dispute arising out of termination such as denial of past service and wages for intervening period would be covered by S. 2-A as it has been held by the Hon'ble Apex Court in the case *K. Karunakar vrs A.P.S.R.T. Corpn.* 2006 (2) LLN 470 (S.C.). Accordingly this issue is answered.

9. *Issue No. (iv)*—The claimant has also sought for the relief of regularisation of his service basically claiming to be in the same footing like others similarly appointed workers who have already made regular by the order of Odisha Administrative Tribunal. Admittedly they have not been made parties in this case. There is no dispute they are not the staff of Kundra C.H.C. There is no material if they were appointed alike the claimant. There is no material to show that they all alike him remained absent unauthorizedly as found above. There is no material to show if their appointment

were appointed in the post which became vacant on the resignation of the previous employee, particularly on the representation made by them like the claimant in this case. More importantly the other workers who are stated to have been regularized after having put their services for more than 11 years as per Ext. 11 whereas the claimant in this case has worked only for 9 years odd not even for 10 years which is the minimum yardstick which is one of the eligibility criteria for consideration of regularisation, *inter alia* others in view of Judgment of the Hon'ble Apex Court by its Constitution Bench in the Case State of Karnataka and others *vrs* Umadevi, (2006) 4 SCC 1 have decided on 10th April 2006, wherein at Paras.43, 44 and 45, which are relevant in this case in my opinion, may be permitted to be reproduced as follows:

"43 ...xx... It must be shown that the statute imposes a legal duty on the authority and the aggrieved party had a legal right under the statute or rule to enforce it. This classical position continues and a mandamus could not be issued in favour of the employees directing the government to make them permanent since the employees can not show that they have an enforceable right to be permanently absorbed or that the state has a legal duty to make them permanent.

44. There may be cases where irregular appointments (not illegal appointments as explained in State of Mysore *vrs* S.V NARAYANAPPA, 1967(1) S.C.R 128, R.N NANJUNDAPPA *Vrs*. THIMMIAH & ANR (1972) 2 S.C.R 799, and B. N. NAGARAJAN, AIR 1979 SC 1676 referred to in the Paragraph 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees and the employees have continued to work for ten years or more but without the intervention of orders of the Court or Tribunals. The question of regularisation of the services of the employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgement. In this context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one time measure, the services of the such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the Court or of Tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being employed. The process must be set in motion within six months from this date. We also clarify that regularization, if already made, but not subjudice, need not be reopened based on this judgment, but there should be no further by-passing of the constitutional requirements and regularizing or making permanent, those not duly appointed as the constitutional scheme."

45. It is also clarified that those decisions which runs counter to the principles settled in this decision, or in which directions running counter to what we have held herein, will stand denuded of their status as precedent.

9.1 Despite amid the above facts and circumstances and settled law having regard to the above principles of law, the claimant has claimed regularization relying upon the following decisions of our Hon'ble High Court of Orissa in the Case of Prasanna Kumar Mohanty *vrs*. The Vice-Chancellor Jagannanth Sankrit Vishvaavidyalaya and two others, 2017 (I) OLR 937, Aditya Narayan Mishra *Vrs*. State of Orissa through Secretary to Government of Orissa, Department of Housing & Urban Development, Bhubaneswar and others, 2020 (Supp.) OLR 734, Pramod Kumar Patra & other *Vrs*. State of Odisha & others, 2023 (Supp.II) OLR -644, Ranjeet Kumar *Vrs*. State of Orissa

and *vrs.*, 2018 (Supp.-1) OLR - 111, Gyananendra Kumar Biswal *Vrs.* State of Odisha & others, 2022 (Supp.) OLE- 557, Umakanta Udgata *Versus* State of Odisha and others, 2019 (Supp.L) OLR - 813 Niranjana Nauak *Vrs.* State of Odisha and others., 2023 (I) OLR - 407. On the perusal of all the above judgements, it would show that the facts and circumstances of any of those cases is not similar to the present case, particularly the yardstick of 10 years or more length of the service rendered by the claimant in this case as prescribed by the Hon'ble Apex Court in *State of Karnataka vrs. Umadevi (supra)*. No doubt, all those cases have been decided by the Hon'ble High courts in writ petitions and others following the principles of above land mark Judgement of Apex Court. None of the cases is found to have been arisen from being decided by any Labour Courts alike this Court. In a case of *Management of Divisional Engineer, Telecommunications, Mahaboobnagar vrs. Yenkaiah* 2007 (112) FLR 24 Hon'ble Andhra Pradesh High Court has held that mere completion of 240 days of continuous service in a year can not by itself, form the basis for directing regularisation of services of workman observing, at Para. 44, the decision of the Hon'ble Apex Court in *Manager, Reserve Bank of India vrs. S. Mani* where it has been held that:

“...In law 240 days of the continuous service by itself does not give rise to claim of permanence. Section 25-F provides for grant of compensation if a workman is sought to be retrenched in violation of the conditions referred to therein ...xx... Further a direction for reinstatement for non-compliance with the provisions of Section 25-F of the I.D. Act would restore to the workman the same status which he held when terminated”.

9.2 No doubt nor any dispute that this Court is not the Constitutional Court like the Hon'ble Supreme Court or High Court who only can decide the matter of regularisation on merit under Article 32 or 226 of the Constitution of India as per the above decision of Hon'ble Apex Court in the *State of Karnataka Vrs. Umadevi (Supra)*. No larger Bench decision has been brought to the knowledge of this court on behalf of the management. All the judgments as relied upon by the claimant are found to have followed the principles of this five Judges Bench decision. No doubt nor nay dispute, this Court can not exercise any power beyond the power statutorily conferred upon it. In view of the above discussions and having regard to the principles by the above settled law of the Hon'ble Apex Court amid the prevailing facts and circumstances of this case, more particularly as it has already been observed above that the management is at liberty to initiate the departmental proceeding for the unauthorised absence of the workman or/and other misconduct, if any, I am of the humble opinion that the claimant can not be held to be entitled to relief of the regularisation as sought for by him in this proceeding. Accordingly, the issue is answered in negative against the claimant. Hence order;

ORDER

The claim-petition be and the same is allowed in part on contest against the management in view of the above findings. It is held that the above actions of the management can be said to have terminated the claimant-workman Sanjib Kumar Asha otherwise other than the specific order of dismissal or retrenchment under Section 2 A of the Act as per the above discussion and thereby the same amounts to unfair labour practice for non-compliance of the provisions of Section 25F of I.D. Act and in violation of natural Justice, when his right to work continues until and unless the same be ceased by the management as per the appointment order or through departmental proceedings as per rules and with notice to him for his unauthorised absence to hold good the principle of natural justice as observed above. The management, thus, is directed to immediately reinstate the claimant-workman into the service by allowing him to work with the back wages as follows; that claimant is entitled to get full wages for his proved presence prior to 16th September 2015, if not yet paid, and the claimant is entitled to get 50% wages during the disputed period from

16th September 2015 till 17th September 2017 and thereafter till his reinstatement by allowing him to work as before dispute along with admissible service benefits to him excluding the wages for the period of his proved absence therefrom, as shown in the table, until the such absence being converted to sanctioned leave by his appropriate authority as per Rules, if permissible and admissible, and subject to the result of departmental proceeding, if be initiated against him by the management for his unauthorised absence and other misconducts, if any. The management is further directed to pay the aforesaid amount to the claimant within three months of the date of the publication of the award failing which the amount shall carry interest @ 9% thereupon till the final payment is made. It is also made clear that the claimant is at liberty to take recourse of law as available in law in case of failure of compliance of this order by the management. Considering the facts and circumstances of the case, no order as to cost. Send the copy of this Award forthwith to the appropriate government for notification as required under Section 17 of the I.D. Act, 1947.

Typed and corrected by me.

PRAVURAM DAS ADHIKARI
30-09-2024
Presiding Officer
Labour Court, Jeypore

PRAVURAM DAS ADHIKARI
30-09-2024
Presiding Officer
Labour Court, Jeypore

[No. 10192—LESI-IR-ID-0101/2024-LESI]
By order of the Governor
NITIRANJAN SEN
Additional Secretary to Government

Witness examined on behalf of workman :

W.W.No.1 : Sanjib Kumar Asha

Witness examined on behalf of management :

M.W.No.1 : Sanatan Pradhan

M.W.No. 2 : Ranjeet Kumar Panda

M.W.No. 3 : Arun Kumar Padhi

M.W.No. 4 : Dr. Subhaprasad Sahu

Documents produced on behalf of workman :

Ext.1 : The office copy of the complaint petition filed before the Deputy Labour Commission on dated the 27th October 2017.

Ext.2 : Photo copy of Letter No. 991, dated the 8th December 2017

Ext.3 : Photo Copy of Letter No. 1216, dated the 16th November 2017

Ext.4 : Photo copy of application addressed to the D.L.O, Jeypore by the workman for illegal retrenchment.

Ext.5 : Photo copy of Office Order vide Letter No. 4515, dated the 11th June 2008.

Ext.6 : The Photo copy passbook of the workman

Ext.7 : Photo copy of list of DWL who completed 44 days service since 2008

Ext.8 : Photo copy of Attendance Register (14 sheets)

Ext.9 : Photo copy of Letter No. 9616, dated 6th July 2017 of the C.D.M.O, Koraput addressed to the DMET, BBSR along with list of Seniority list.

Ext.10 : Photo copy of No. 1386 (c) / 2019 in order, dated the 16th July 2019 of Odisha Administrative Tribunal.

Documents produced on behalf of the management :

Ext.A : The Office Order vide No.1515, dated the 11th June 2008 whereby the applicant was engaged.

Ext.B : The Joining report, dated the 16th June 2008 of the workman

Ext.C : The Office Order vide Letter No. 1556, dated the 15th March 2012 whereby the engagement of workman was extended.

Ext.D : The further extension order of workman vide Office Letter No. 5096, dated the 6th June 2013.

Ext.E : The further extension order of workman vide Office Letter No. 5518, dated the 23th July 2014.

Ext.F : The Letter No. 3900, dated the 6th June 2017 of the C.D.M.O, Koraput to MOs of different hospitals for non-payment of wages.

Ext.G : The reply of Mo, Kundra to C.D.M.O vide Letter No. 888, dated the 18th August 2017 regarding absent of workman from his duties and payment of wages.

Ext.H : The Letter No. 4788, dated 13th August 2019 sent the Commission cum Secretary to Govt., Health & FW. Dept, BBSR along with the Gradation List of Group-D employees engaged on daily wages basis.

Ext.J : The Original Attendance Register of staffs in Kundra C.H.C. for the year 2015.

Ext.K : Siled the Original Attendance Register of staffs in Kundra C.H.C. for the year 2016.

Ext.L : Filled the Original Attendance Register of staffs in Kundra C.H.C. for the year 2017.